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COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER

OFFICE OF THE MONTANA
STATE AUDITOR

EXHIBIT 7
DATE 3/10/11
SB 221

March 9, 2011

House Business and Labor Committee

Re: SB 221

Members of the Committee:

This is a follow-up to the committee's inquiries during the hearing on SB 221. This is being provided as informational only and should not be construed as this office taking a position on the bill. Unfortunately, I will not be available during executive action.

An Accountable Care Organization [ACO] is loosely defined as a network of doctors and hospitals that share responsibility for providing care to patients. An ACO would bring together different component parts of care for the patient, such as primary care, specialists, hospitals, home health care, etc., and ensure that all the care is efficiently coordinated in a way that saves money and time and avoids duplicative and unnecessary care. ACO's would make providers jointly accountable for the health of their patients, giving them strong incentives to cooperate and save money by avoiding unnecessary tests and procedures. ACO's can work as a fee for services system, a capitation fee system, or a combination of both. A capitation fee system allows an insurer or other entity to make one flat payment to a provider group for each enrollee. The provider group then agrees to provide all the care needed for that enrollee for that flat fee, regardless of actual costs incurred. The capitation fee system requires the provider to "assume risk" because the cost of providing care to a particular group of patients could exceed the capitation fees paid.

The Medicare shared savings program does not require a capitation fee system. It allows a fee for service system, with incentives and bonuses built in when providers are successful in keeping costs down. ACO's keep costs down by emphasizing wellness and primary care and carefully managing chronic conditions in order to avoid hospitalizations. In order to participate in the Medicare shared savings program, the ACO would need to invest in improvements, such as hiring care managers and other care coordination improvements. A benchmark dollar amount for determining average yearly medical costs per individual is established by Medicare. If the ACO ends up billing less than that benchmark figure, the ACO would share the savings with Medicare and thus cover the cost of their investment. If the ACO fails to meet the benchmark, it would still receive the standard Medicare fees, but it could still lose money because it would not receive a return on its investment.

Federal regulations may require an ACO to act like an HMO, which is defined as "arranging for or providing basic health care services to enrollees on a prepaid basis." In order to avoid regulatory problems with HMO licensure requirements, SB 221 proposes a process whereby the State Auditor could waive HMO licensing requirements for ACO's under certain circumstances.

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The waiver process outlined in this bill mirrors the waiver process that is currently available for PACE [Program of all inclusive care for the elderly] in Mont. Code Ann. § 33-31-201. Our office proposed a waiver for HMO licensing for groups of providers forming a PACE organization because even though the provider group was "providing basic health care services on a prepaid basis," there was no real risk to the beneficiaries of that program - if the PACE provider organization became insolvent or was dissolved, the beneficiaries could immediately fall back on regular Medicare and Medicaid. The situation with the Medicare shared savings program is similar. If our office determines that the ACO is acting as an HMO, this bill gives the us the authority to waive any HMO licensing requirements. The beneficiaries are protected by the public program (Medicare) even if the ACO becomes insolvent or otherwise dissolves, because the covered individuals remain enrolled in regular Medicare and can immediately seek care elsewhere.

The State Auditor's office would not be involved in the Medicare sharing savings program beyond granting a waiver from state licensure for the ACO, if such a waiver is determined to be necessary.

Respectfully,

JESSE LASLOVICH

JL/sls

(by hand-delivery)